APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the thirteenth day of November one thousand nine hundred and seventy-two.

Present: HON. J. JOSEPH SMITH, HON. IRVING R. KAUFMAN, HON. WILLIAM H. MULLIGAN, Circuit Judges,

72-1579

UNITED STATES OF AMERICA *Plaintiff-Appellee,*

v.

HARVEY ROSENBERG, *Defendant-Appellant.*

Appeal from the United States District Court for the Southern District of New York.

This cause came to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREFORE, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth

day of November, one thousand nine hundred and seventy-two.

Present: Hon. J. Joseph Smith, Hon. Irving R. Kaufman, Hon. William H. Mulligan, Circuit Judges,

72-1579

United States of America, *Plaintiff-Appellee,*

v.

Harvey Rosenberg, *Defendant-Appellant.*

A petition for a rehearing having been filed herein by counsel for the appellant.

Upon consideration thereof, it is Ordered that said petition be and it hereby is Denied.

A. Daniel Fusaro
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Cr. 860

Memorandum

United States of America
-against-
Harvey Rosenberg, *Defendant.*

Irving Ben Cooper, D. J.

It would serve no useful purpose by a recital of the details of many unnecessary steps and counter steps heretofore taken by the parties. Suffice it to say that much time has been wasted by both sides—by the defendant in renewing requests for substantially identical relief previously considered and disposed of; by the Government in a

clear failure within a reasonable time to comply with our order of June 1, 1967 (we are at a loss to understand the inordinate time it permitted to pass; even at this late hour it offers no satisfactory reason).

In disposing of the applications now before us, we note with particularity (1) defendant's motion originally filed March 21, 1968 seeking to dismiss the October 27, 1966 indictment for failure by the Government to comply with our order of June 1, 1967 and renewing a variety of requests for discovery and other relief previously disposed of, (2) the very large number of adjournments by consent, (3) a stipulation of May 8, 1968 (signed by both parties) marking the motion off the calendar pending restoration upon ten days notice, and (4) defendant's motion for dismissal because the period of time that has elapsed since indictment constitutes a denial of the right to a speedy trial. We dispose of the two motions as follows:

March 21, 1968 motion

(1) Defendant's request to dismiss the indictment for failure by the Government to comply with our order of June 1, 1967 is denied. The directed bill of particulars was filed on July 8, 1969. The Government recites in its Affidavit in Opposition, p. 3, that it will complete its obligation by serving "on defense counsel copies of all documents called for by the decision of this Court" before December 2, 1970.

We are satisfied with the Government's assurances of statements by the "investigators in charge of the pre-indictment investigation" that there was no wiretap or electronic surveillance in any way relating to this matter.

(2) In view of the substantial delay in bringing this case to trial, we conclude that the interests of justice would best be served by granting defendant's application for discovery of testimony of the two Federal Bureau of Narcotics agents before the Grand Jury that returned the pending

indictment—however, only to the same extent permitted by Judge Weinfeld's order of June 15, 1966 in respect of the testimony of these same agents before the April 1965 Grand Jury.

(3) We reaffirm our denial of defendant's request for discovery of the Grand Jury testimony of Block and Markowitz for the reasons set forth in our order of June 1, 1967.

(4) Defendant's request for those portions of the memorandum report of Wurms and Worden, dated May 6, 1965, not ordered disclosed by Judge Weinfeld are denied.

(5) Defendant's request that this Court examine the "grand jury proceeding relating to defendant" is denied. Government's Reply Affidavit, November 10, 1970, p. 2-3.

(6) The Government shall bear the cost of discovery and for all material included in sections 1 and 2 of this order.

November 2, 1970 motion

Defendant's motion to dismiss for failure by the Government to diligently prosecute is denied. See *United States* v. *Borman,* Dckt. No. 34226 (2d Cir. January 18, 1971); *United States ex rel. Solomon* v. *Mancusi,* 412 F.2d 88 (2d Cir.), cert. denied, 396 U.S. 958 (1969).

In light of what we regard as inexcusable delay on the Government's part (referred to above), and for the reasons set forth in the papers submitted in behalf of defendant, we accede to the request that we set a trial date for the fall of 1971.

So Ordered:

New York, N.Y.

February 8, 1971

/s/ Irving Ben Cooper
United States District Judge

APPENDIX D

[Excerpt from Grand Jury Testimony of Harvey Rosenberg, July 14, 1965]

Q. What were the circumstances when Miss Block received the subpoena? Did she receive it in your office? A. [Nods]

Q. Who else was present, do you recall? A. Two FBI men. Two Federal Bureau of Narcotics agents.

Q. Do you remember their names? A. If you mention it, I'll tell you. I know one of them. He's in an assigned criminal case. He was the agent that I had in all my—this is the only criminal case I ever got paid for, I think. Maybe one or two more. And the assigned criminal case, he was the agent, so I knew who he was.

Q. Did they interview Miss Block on this occasion? A. Yes sir.

Q. One of the agents named Warden? A. No sir, that I don't remember. Is he the—there's a red-headed fellow, I think. Irving something.

Q. How about Agent Peterson? A. No. Peterson doesn't —what was Warden's first name?

Q. Gary G. A. No sir, that doesn't strike a note.

Q. And I take it that these agents questioned— A. The same agent who called her immediately after the last time we were in Court. On the 21st of June, I believe.

Q. What did the agent tell her at that time? A. I don't know. She told me the agent called her.

Q. Did she tell you what he said? A. I think that would be privileged.

Q. What the agent told your client is privileged because you represent the client? A. She told me something, and I—I'm not sure that—you know, it's 25th order of something or other. Do you want to know what she told me the agent said? The agent told her that I put her in the soup.

Q. That's all? A. That's all she told me.

Q. Did the agents discuss with you on this occasion the

thirty-thousand-dollar bond that was posted? A. I don't recall whether they did or not.

Q. You don't remember? A. They didn't come to see me. They came to sit in my office while talking to her.

Q. That was at your request, I take it, they came to your office? A. Miss Block requested and said she would make a statement to them, she would answer the questions, if I was present, or some lawyer of her choosing, which was me.

Q. Do you recall what the questioning of Miss Block concerned? A. I have no notes on it.

Q. That wasn't my question. Do you recall— A. I don't recall. I remember vaguely some things, but—I—

Q. What are those things that you vaguely— A. She took trips, that's all.

Q. That's all you remember? A. That's all I remember.

Q. Did you discuss with your client, before the agents came, what her answers would be or what the subjects of inquiry might be? A. I discussed—not the subject of inquiry, because I didn't know what the subject of inquiry was—I discussed, generally, with my client her problem.

Q. And did that problem concern the thirty-thousand-dollar cash bond posted for Mr. Romano? A. Not at that time, it didn't.

Q. Do you recall whether, in the conversation between the agents and Miss Block, the subject of the thirty thousand dollars came up? A. No, I don't. I really don't.

Q. You don't recall that? A. [Shakes head]

Q. Do you recall whether you would have told the agents anything about the thirty thousand dollars? A. If I knew anything.

Q. If you knew it, would you have told them? A. If it would help them, I would have. I'm sure I would have. If it would do any good, I would help, and if it didn't violate an attorney-client privilege.

Q. Did the agents, do you recall, ask you about the thirty thousand dollars? A. I don't recall Mr. Tend—Mr. Ober-

maier—I really don't. The only thing I recall is this—and I thought his name was Irving. He's a big ruddy-faced fellow. He said something about, "Well, after all, you're assigned criminal cases, you got a big one." I expect he was talking about Mr. Romano.

Q. And, in response to that, what did you say? A. Nothing.

Q. Absolutely nothing? A. Not that I recall. I remember laughing.

Q. Well, you've told this Grand Jury that you had no personal knowledge prior to June 17 of the source of the thirty thousand dollars,— A. Yes sir.

Q. —circumstances surrounding the receipt thereof, is that right? A. Yes sir.

Q. Did you tell the agents that you had no personal knowledge of the thirty-thousand dollars? A. I don't think they asked me any questions about the thirty thousand dollars. I don't remember any.

Q. If they had asked you questions, do you think you might recall? A. I might recall the questions? Or—

Q. Or the fact that they asked you about the thirty thousand dollars. A. I don't know, Mr. Obermaier.

Q. But you have no present recollection? A. No, because they didn't come to talk to me, and my whole reason for being there was to assist Miss Block, and that was the only reason I was there, to act as her counsel and allow her to say anything that would aid them and not injure Miss Block.

Q. Did you dictate any memoranda after this conference between Miss Block and the agents and yourself? A. No sir. As a matter of fact, most of the conversation went to—well, Miss Block said,— you know all these things anyway, and that was the sum and substance.

Q. But you made no office notation? A. I made no office notation, sir.

Q. Would there be an office notation as to when the conference was? A. No. It may be in my diary, you know.

I can find out who the agent is, but I'm sure you know better than I do.

Q. Was it Agent Wurms? A. Wurms.

Q. First name, Ivan. A. Ivan. See, Irving and Ivan are pretty close. I knew the other two names did not sound familiar. There was another tall, lanky fellow with them, but I don't know his name, never saw him before. Wurms has been on the stand when I questioned him with regard to assigned criminal case. He's the one that made the statement to me.

Q. And you recall nothing in the conversation between Wurms and yourself, concerning the thirty thousand dollars? A. No sir. I really don't.

Q. Would it refresh your recollection any if I told you that that interview was conducted on April 30, 1965? A. Wouldn't refresh it, but it's probably the dates if you tell me it is.

Q. It was on that date or immediately prior thereto that you were retained by Miss Block? A. It was the date—and I've consistently told you this—it was the date that she got called by the Federal Bureau of Narcotics agents and then, with regard to the Grand Jury matter, she was handed two subpoenas and she asked me to represent her on that date. I thought it was in May. Now when did she appear in the Grand Jury? Maybe—we're talking about the date? May 12th? 13th? Sometime when she went to the Grand Jury.

Q. Did you represent her before the District of Columbia Grand Jury? A. One of my partners; I was engaged in a trial; I was engaged in a trial in another jurisdiction.

Q. Well, the subpoena was received at the time you had the conversation, returnable at some future date? A. Right.

Q. When you testified that you had no personal knowledge as to the source of the $30,000, that testimony, I take it, was true, when you gave it here in the Grand Jury? A. Mr. Obermaier, everything I say is true.

Q. Well, between the time that Miss Block was interviewed by the Federal Bureau of Narcotics agents, and the time you gave that testimony, did you acquire any personal knowledge as to the source of the $30,000? A. No, sir. Now, up till—up till that Thursday morning, now.

Q. I'm talking about the time you gave the testimony before this Grand Jury and Judge Cannella that you found the brown paper bag on your desk? A. No, sir; no, sir.

Q. Did you know any more about the $30,000 when the agents interviewed Miss Block than you did at the time you gave your testimony? A. No, sir.

Q. So that at the time you were interviewed by the agents you had no personal knowledge as to the source, or how you obtained the $30,000? A. No, sir.

Q. None whatsoever? A. No.

Q. So that even if you wanted to be helpful to the agents, you couldn't have told them anything, I take it? A. Nope.

Q. Absolutely nothing? A. Nothing; nothing.

Q. Did they ask you about the $30,000, and did you say, "I don't know anything about it"? A. I told you, Mr. Obermaier, they were not asking me anything.

Q. About—? A. About nothing.

Q. They asked no questions of you at all? A. No, sir.

Q. None whatsoever? The only conversation between you and Agent Wurms was that he said something to you about your assigned cases, "and now you've got a big one"? A. "Now you're representing a big one"—something to that effect. And he said to me something about, "Now we're going to get"—"we're going to get Mr. Markowitz." Now, why he said it, I don't recall. He said something like that.

Q. But the agents asked you nothing about the $30,000? A. Not to my recollection, they didn't. They didn't come to talk to me. They came to talk to Miss Block.

Q. That's not what I'm asking you. A. I don't recall anything about the $30,000 ever being asked me.

Q. But at the date that Miss Block was interviewed, you had no more knowledge about the source—of how you obtained the $30,000 than you did when you testified before the Grand Jury, is that right? A. No, sir.

Q. And you certainly wouldn't have given the agents any false testimony, or false information, would you? A. No, sir; I would not.

Q. Did you tell Agent Wurms that you received a telephone call from Markowitz concerning the $30,000? A. I don't recall any such conversation.

Q. Well, would such a conversation have been had between you and Wurms, that you—? A. I doubt it.

Q. You know you had no personal knowledge as to how you obtained the $30,000? A. That's right, sir.

Q. Didn't you tell Agent Wurms that Markowitz, during the telephone conversation, told you that he was sending down $30,000 by messenger? A. No, because that's not what happened.

Q. You didn't tell the agent that? A. [Shakes head, no.]

Q. Is there any doubt in your mind that you had no such conversation, even approaching that subject? A. I don't recall any such conversation, Mr. Obermaier. Anything would be possible, but that did not happen. Mr. Markowitz did not, to my knowledge, and even to my present knowledge,—well, now,—you're getting—

Q. Well, did you tell the agents that Markowitz called you? A. Did I tell the agents Markowitz called me?

Q. And told you that he was sending down $30,000 in cash? A. I don't think so. I don't know. I don't recall any such conversation.

Q. Well, no such conversation would have been possible, because that isn't the way it happened, according to your testimony, is that right? A. It didn't happen that way; that's right. I found that out subsequently.

Q. Then you wouldn't have given the agents any false information? A. Not intentionally, I didn't give anyone

any false information. I didn't give the agents any information.

Q. Between the time Miss Block was interviewed, and the time you testified initially before the Grand Jury, — A. Uh huh.

Q. —did you tell the agents that the messenger did come down and that you went to Romano in the District jail, and asked him what to do with the $30,000? A. No, I don't recall any such conversation.

Q. Did you tell the agents that you took a receipt for $30,000 down to Romano and asked him who he wished to have sign the receipt? A. Who he wished to have sign the receipt?

Q. Did you talk to Romano about the receipt of the $30,000? A. Did I? I think that's privileged communication.

Q. Did you talk to the agents about that? A. Not to my knowledge. I wouldn't tell them anything that's privileged.

Q. That didn't happen that day, I take it? A. Now you're asking me to tell you about a privileged communication.

Q. I don't think so. A. You're asking me did I say something to Mr. Romano about a receipt?

Q. I'm asking you if it happened that way? A. What way?

Q. If you had a conversation with Romano about the receipt of the $30,000. A. I think that's privileged.

Q. Well, you certainly weren't acting in an attorney's capacity with respect to the $30,000. A. Well, look, first of all, the facts are, when I got the $30,000, I called the bonding company and I got Mr. Romano out, so I certainly wouldn't have gone down to the jail with the $30,000.

Q. That's not my question; not even close to my question. I asked, did you go down to Romano with respect to a receipt for the $30,000? A. No, sir.

Q. Did you tell the agents that you went down to the District jail to talk to Romano about a receipt for the

$30,000? A. Not to my knowledge, because it never occurred—

Q. Did you tell the agents that Romano told you that you should sign the receipt for the $30,000 and give it to Senge? A. No, sir, because I wouldn't be signing a receipt for $30,000 I gave away.

Q. You wouldn't be signing a receipt for $30,000 you gave away? A. If I give you $30,000, Mr. Obermaier, I wouldn't give a receipt for $30,000; you'd give me a receipt.

Q. And wouldn't the person to whom you gave the $30,000 issue a receipt to you? A. Normally they would.

Q. Did they, in this instance? A. Nobody's got a receipt from me.

Q. Did you tell the agents that you signed a receipt for the $30,000? A. No, sir.

Q. Did you tell the agents that you could produce that receipt, if it was necessary? A. No, sir; there is no such receipt.

Q. No such receipt at all? A. No, sir.

Q. You didn't sign a receipt for the $30,000? A. No, sir.

Q. You didn't tell the agents that you signed a receipt for the $30,000? A. You know,—I don't know what the agents have said, but I did not discuss this matter with the agents.

Q. At all? A. No; my recollection, no. And I could not have told them that there was a receipt, because there is no receipt.

Q. And you could not have told them that you went down to Romano in the District jail, to discuss the $30,000 receipt, did you? A. No, sir, because I got Mr. Romano out within six hours of having received the money. I didn't go to the jail.

Mr. Obermaier: Would you ask the witness to step outside for a minute?

Foreman: Kindly step aside. (Witness leaves room and is recalled)

Q. Mr. Rosenberg, you're still under oath. A. Yes.

Q. Did Mrs. Romano furnish you any information about the $30,000? A. With respect to how I got it?

Q. Yes? A. No, sir.

Q. The only—well, did Mrs. Romano's sister furnish you with any information? A. No, sir.

Q. The only client whom you've spoken to, and who furnished you information is Muriel Block? A. Yes, sir.

Q. The only source of that information which you now possess was your conversation with Miss Block on June 13, 1965? A. Yes, sir.

Q. Did you have any telephone conversations with Markowitz concerning the $30,000? A. When? If you're talking about subsequent to the—you're asking me about the $30,000? Yes, I did have a conversation.

Q. How about in July of 1964? A. Only conversations that I had was, if I recall having any, they were with respect to, we needed $30,000 for bond, but I don't— You see, I don't recall calling Mr. Markowitz about the thing. I really don't. I don't know whether Mrs. Romano called. I know she called once from my office.

Q. Mrs. Romano in your presence called Mr. Markowitz? A. On one occasion. I don't remember what.

Q. Did her conversation deal with the $30,000? A. I don't recall. I mean, I am sure that Mr. Markowitz knew that we required $30,000 for bail—I mean, for collateral.

Q. Did he personally convey that conversation to you? A. I don't have any independent recollection.

Q. Do you have any kind of recollection concerning Mr. Markowitz indicating to you with reference to the $30,000? A. I don't have any independent recollection.

Q. Do you have a dependent recollection? A. No, independent or dependent.

Q. Did you tell Agent Wurms that you had such a conversation? A. I have no recollection about a conversation with Agent Wurms about the $30,000. I have absolutely no recollection about it at all because the only reason he was in my office was to talk to Miss Block.

Q. You have no recollection that you had this conversation? A. My testimony is I have no recollection of it whatsoever.

Q. Would such a conversation have been possible? A. Is that a question, Mr.—

Q. I think it is, yes, Mr. Rosenberg. A. I think anything in the world is possible.

Q. If such a conversation has taken place, you would certainly have given false information to the agents, I take it. A. Mr. Obermaier—

Q. Yes. A. I resent the question, and is that a question, that I would give false information to the agents?

Q. I am saying, you have no independent recollection of speaking to Agent Wurms, I take it, about the $30,000? A. No, sir.

Q. And your conversation with Markowitz concerning the— A. No, sir, other than what I have told, that I knew Markowitz knew there was $30,000 required for the bond; at least, I am pretty sure $30,000 was required as a collateral. I have no independent recollection of any conversation with Mr. Wurms.

Q. Do you have any independent recollection of having a conversation with Wurms? A. With Wurms?

Q. Yes. A. Sure. He was sitting in my office.

Q. Well, tell us the sum and substance of the conversation. A. The only recollection I have of the conversation is, he asked me a lot of questions and I think questions which I don't think Miss Block should answer. I don't think there were any on that occasion I had told her not to answer and she answered the questions and then we had this jovial conversation or jocular conversation, I guess it would be, of his statement about, now you are refusing, or on that occasion, you represent— The import was, it wasn't an assigned criminal case.

Q. Did you tell him how much money you had made, what your fee was for Romano, for representing him? A. I have no recollection doing that.

Q. Do you have any more recollection that what you have already told us about the conversation with Agent Wurms? A. I have no other, other than the questions that were propounded to Miss Block and it wasn't asking me any questions, because I wasn't there to be asked any questions. We had—

Q. Do you recall any questions being asked of you? A. I don't recall any questions being asked of me. I remember a jocular conversation and the conversation that I told you about Mr. Markowitz.

Q. Is there anything in the testimony before this Grand Jury that you wish to change at this time? A. I don't know of any testimony that I have given this Grand Jury that is not true. I just don't recall the conversations with Mr. Wurms respecting me, because I just don't recall anything about that. Everything I have told this Grand Jury is true.